

Senate Study Bill 3208

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CO=CHAIRPERSON JOHNSON)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act precluding certain enforcement actions by the department
2 of natural resources or the attorney general based on
3 detrimental reliance.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 6140SK 81
6 da/gg/14

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1 1 Section 1. Section 455B.109, Code Supplement 2005, is
1 2 amended to read as follows:
1 3 NEW SUBSECTION. 6. The department is precluded from
1 4 taking an enforcement action against a person for failing to
1 5 comply with a requirement if the person has detrimentally
1 6 relied upon the department's binding explanation of the
1 7 requirement as provided in section 455B.110.
1 8 Sec. 2. NEW SECTION. 455B.110 ENFORCEMENT ACTION ==
1 9 PRECLUSION BASED ON DETRIMENTAL RELIANCE.
1 10 1. As used in this section, unless the context otherwise
1 11 requires:
1 12 a. "Department representative" means an official or
1 13 employee of the department or an agent of the department,
1 14 including a contractor who holds themselves out as acting on
1 15 behalf of the department.
1 16 b. "Enforcement action" means any of the following:
1 17 (1) For the department, issuing an order, initiating or
1 18 acting as a party in a contested case proceeding, or rendering
1 19 a proposed or final decision as provided in chapter 17A, for
1 20 purposes of imposing, assessing, or collecting a civil penalty
1 21 under section 455B.109 or 455B.191.
1 22 (2) For the attorney general, bringing a judicial
1 23 proceeding, or acting as a party in a judicial proceeding,
1 24 including a civil or criminal action, to the extent authorized
1 25 by section 455B.112, 455B.146, 455B.146A, or 455B.191.
1 26 2. a. The department is precluded from taking an
1 27 enforcement action to impose, assess, or collect a civil
1 28 penalty against a person who has detrimentally relied upon a
1 29 binding explanation by the department which erroneously
1 30 advises the person how to comply with a requirement of a
1 31 statute or departmental rule, including by performing or
1 32 refraining from performing an act.
1 33 b. The attorney general is precluded from taking an
1 34 enforcement action to obtain a criminal judgment or impose,
1 35 assess, or collect a civil penalty against a person who has
2 1 detrimentally relied upon a binding explanation by the
2 2 department as provided in paragraph "a".
2 3 3. The department's explanation may be provided to a
2 4 person who may have violated this chapter in writing or
2 5 verbally, including by a departmental representative. If the
2 6 department's explanation is provided in writing, it shall be a
2 7 binding explanation. If the department's explanation is
2 8 provided verbally, it shall become binding as follows:
2 9 a. The person must deliver a request for confirmation to
2 10 the department at an address established by the department for
2 11 the purpose of receiving requests for confirmation. The
2 12 person's request for confirmation must be in writing and
2 13 delivered to the department within fourteen days after the
2 14 department's explanation was verbally provided to the person.
2 15 The person's request for confirmation must include all of the

2 16 following:

2 17 (1) A return address for the department to deliver a
2 18 response to the person.

2 19 (2) The explanation sought to be confirmed.

2 20 (3) The date that the department's explanation was
2 21 provided.

2 22 (4) The name of the department representative who provided
2 23 the explanation.

2 24 b. The department may deliver a response to the person's
2 25 return address as provided in the request for confirmation.

2 26 The department's response shall do one of the following:

2 27 (1) Confirm that the department's explanation provided
2 28 verbally to the person is binding. The department may deliver
2 29 the response to the person at any time.

2 30 (2) Deny that the department's explanation is binding.

2 31 The department may include a binding explanation in writing.

2 32 The department's response must be delivered to the person
2 33 within thirty days after the person delivers the request for
2 34 confirmation to the department. If the department fails to

2 35 deliver a timely response to the person, the explanation
3 1 sought to be confirmed by the person as provided in the
3 2 person's request for confirmation shall be the binding
3 3 explanation.

3 4 4. The department's explanation, the person's request for
3 5 confirmation, and the department's response may be transmitted
3 6 in an electronic format, including but not limited to the
3 7 internet, and shall be deemed written.

3 8 5. a. If a binding explanation concerns a requirement
3 9 subject to a variance as provided in section 455B.143, or
3 10 otherwise as a waiver or variance as provided in section
3 11 17A.9A, the binding explanation shall be deemed to be a waiver
3 12 or variance as provided in those sections.

3 13 b. If a binding explanation concerns a requirement that is
3 14 not subject to a variance or waiver as provided in section
3 15 455B.143 or 17A.9A, the department shall deliver a notice to
3 16 the person who has been precluded from being subjected to an
3 17 enforcement action. The notice shall provide that the person
3 18 may be subject to an enforcement action on or after a future
3 19 date. The department shall establish a future date which
3 20 allows the person a reasonable period to comply with the
3 21 requirement. However, the department shall not nullify a
3 22 binding explanation if it would result in undue hardship to
3 23 the person including but not limited to requiring the person
3 24 to move, demolish, or rebuild a structure which was
3 25 constructed or expanded in reliance on the department's
3 26 binding explanation.

3 27 6. The department or attorney general may take an
3 28 enforcement action against a person regardless of a binding
3 29 explanation if any of the following applies:

3 30 a. The person obtains the binding explanation in bad
3 31 faith, having actual knowledge that the explanation was
3 32 erroneous.

3 33 b. The binding explanation concerns a requirement in a
3 34 statute or departmental rule that has been superseded by a
3 35 requirement in a statute enacted or rule adopted after the
4 1 explanation becomes binding.

4 2 7. Nothing in this section prevents the department from
4 3 conducting an investigation or issuing a subpoena requiring
4 4 the attendance of a witness or the production of evidence
4 5 pertinent to a hearing.

4 6 Sec. 3. Section 455B.112, Code Supplement 2005, is amended
4 7 to read as follows:

4 8 455B.112 ACTIONS BY ATTORNEY GENERAL.

4 9 1. In addition to the duty to commence legal proceedings
4 10 at the request of the director or commission under this
4 11 chapter; chapter 459, subchapters I, II, III, IV, and VI; or
4 12 chapter 459A, the attorney general may institute civil or
4 13 criminal proceedings, including an action for injunction, to
4 14 enforce the provisions of this chapter; chapter 459,
4 15 subchapters I, II, III, IV, and VI; or chapter 459A, including
4 16 orders or permits issued or rules adopted under this chapter;
4 17 chapter 459, subchapters I, II, III, IV, and VI; or chapter
4 18 459A.

4 19 2. However, the attorney general is precluded from taking
4 20 an enforcement action against a person for failing to comply
4 21 with a requirement if the person has detrimentally relied upon
4 22 the department's binding explanation of the requirement as
4 23 provided in section 455B.110.

4 24 Sec. 4. Section 455B.146, Code 2005, is amended to read as
4 25 follows:

4 26 455B.146 CIVIL ACTION FOR COMPLIANCE == LOCAL PROGRAM

4 27 ACTIONS.

4 28 1. If any order, permit, or rule of the department is
4 29 being violated, the attorney general shall, at the request of
4 30 the department or the director, institute a civil action in
4 31 any district court for injunctive relief to prevent any
4 32 further violation of the order, permit, or rule, or for the
4 33 assessment of a civil penalty as determined by the court, not
4 34 to exceed ten thousand dollars per day for each day such
4 35 violation continues, or both such injunctive relief and civil

5 1 penalty.
5 2 2. However, the attorney general is precluded from taking
5 3 an enforcement action against a person for failing to comply
5 4 with a requirement if the person has detrimentally relied upon
5 5 the department's binding explanation of the requirement as
5 6 provided in section 455B.110.

5 7 3. Notwithstanding sections 331.302 and 331.307, a city or
5 8 county which maintains air pollution control programs
5 9 authorized by certificate of acceptance under this division
5 10 may provide civil penalties consistent with the amount
5 11 established for such penalties under this division.

5 12 Sec. 5. Section 455B.146A, Code 2005, is amended by adding
5 13 the following new subsection:

5 14 NEW SUBSECTION. 6. The attorney general is precluded from
5 15 taking an enforcement action against a person for failing to
5 16 comply with a requirement if the person has detrimentally
5 17 relied upon the department's binding explanation of the
5 18 requirement as provided in section 455B.110.

5 19 Sec. 6. Section 455B.191, Code 2005, is amended by adding
5 20 the following new subsection:

5 21 NEW SUBSECTION. 7. The department or the attorney general
5 22 is precluded from taking an enforcement action against a
5 23 person for failing to comply with a requirement if the person
5 24 has detrimentally relied upon the department's binding
5 25 explanation of the requirement as provided in section
5 26 455B.110.

5 27 EXPLANATION

5 28 This bill amends the first three divisions of Code chapter
5 29 455B, which provides authority to the department of natural
5 30 resources and in some cases the attorney general to bring an
5 31 enforcement action against persons who violate provisions
5 32 regulating environmental quality (air and water quality).

5 33 BACKGROUND. Division I of Code chapter 455B provides the
5 34 department with general regulatory authority. The department
5 35 may establish a range of civil penalties for violations of the
6 1 Code chapter (Code section 455B.109). The attorney general is
6 2 authorized to institute civil or criminal judicial proceedings
6 3 necessary to enforce provisions of the Code chapter (Code
6 4 section 455B.112).

6 5 Division II of Code chapter 455B regulates air quality.
6 6 The attorney general at the request of the department may
6 7 institute a civil action in court to obtain injunctive relief
6 8 or impose a civil penalty of up to \$10,000 for a violation of
6 9 the division (Code section 455B.146). A person who knowingly
6 10 violates any provision of the division is guilty of an
6 11 aggravated misdemeanor (Code section 455B.146A). An
6 12 aggravated misdemeanor is punishable by confinement for not
6 13 more than two years and a fine of at least \$500 but not more
6 14 than \$5,000. A conviction for a subsequent violation is
6 15 punishable by imprisonment for not more than four years and a
6 16 fine of not more than \$20,000 (Code section 455B.146A).

6 17 Division III of Code chapter 455B regulates water quality.
6 18 Generally, a person who violates a provision of the division
6 19 is subject to a civil penalty of not more than \$5,000 (Code
6 20 section 455B.191). The Code section does not expressly
6 21 provide whether the department or the attorney general may
6 22 enforce the provision.

6 23 The department and the attorney general are required to
6 24 enforce the provisions of Code chapter 459 regulating animal
6 25 feeding operations and specifically confinement feeding
6 26 operations and open feedlot operations in the same manner as
6 27 provided in Code chapter 455B, division I (Code sections
6 28 459.103 and 459A.501). A person who violates an air quality
6 29 standard in Code chapter 459 is subject to a civil penalty
6 30 which is established, assessed, and collected in the same
6 31 manner as provided in Code section 455B.109. A person who
6 32 violates a water quality regulation which applies to a
6 33 confinement feeding operation or open feedlot operation is
6 34 subject to a civil penalty which is established, assessed, and
6 35 collected in the same manner as provided in Code section
7 1 455B.191. There are increased civil penalties for persons
7 2 classified as habitual violators which may be up to \$25,000

7 3 (Code section 459.604).

7 4 BILL'S PROVISIONS. The bill relates enforcement actions
7 5 brought and carried out by the department or the attorney
7 6 general under the provisions described herein. The bill
7 7 provides that the department is precluded from taking an
7 8 enforcement action to impose, assess, or collect a civil
7 9 penalty against a person who has detrimentally relied upon a
7 10 binding explanation by the department which erroneously
7 11 advises the person how to comply with a requirement of a
7 12 statute or departmental rule, including by performing or
7 13 refraining from performing an act. The bill provides that the
7 14 attorney general is precluded from taking an enforcement
7 15 action to obtain a criminal judgment or impose, assess, or
7 16 collect a civil penalty against a person who has detrimentally
7 17 relied upon such a binding explanation by the department.
7 18 In order to be binding, the department's explanation must
7 19 be in writing. If the department's explanation is made
7 20 verbally, it may become binding if the department confirms the
7 21 earlier verbal explanation as requested by the person who
7 22 would benefit from the confirmation. If the department does
7 23 not confirm the earlier verbal explanation or issue a new
7 24 written and binding explanation, the binding explanation is
7 25 that version contained in the person's request for
7 26 confirmation. The binding explanation may be treated as a
7 27 waiver or variance (see Code sections 455B.143 and 17A.9A).
7 28 Otherwise, the department must deliver a notice to the person
7 29 stating that the requirement will become applicable on a
7 30 future date, unless this would result in undue hardship on the
7 31 person who has relied upon the binding explanation. A binding
7 32 explanation does not apply if the person obtained it in bad
7 33 faith or a later enacted statute or adopted rule supersedes
7 34 it.

7 35 LSB 6140SK 81

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